

1 Dianne Crandell Kerns, Trustee
2 Office of the Chapter 13 Trustee

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7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA
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10 In re:

11 AMY H STEPHENS

12 WARREN E STEPHENS JR,

13 Debtors,
14

In Proceedings Under Chapter 13

Case No. 4:10-bk-00627-EWH

TRUSTEE'S OBJECTION /
EVALUATION RE: PLAN OF
REORGANIZATION (DKT 2)

15 DIANNE C. KERNS, the standing Chapter 13 Trustee, hereby objects to the proposed
16 plan of reorganization and requests that the following matters be resolved by submitting a
17 proposed stipulated order on confirmation (hereinafter "SOC") addressing the matters described
18 below or by setting a hearing on the objection within 30 days of this objection/evaluation.
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20 *******IF YOU FAIL TO SUBMIT A TIMELY STIPULATED ORDER OF**
21 **CONFIRMATION THAT ADDRESSES ALL ISSUES RAISED IN THE**
22 **TRUSTEE'S EVALUATION/OBJECTION OR FAIL TO SET A HEARING ON**
23 **THE OBJECTION, THE TRUSTEE WILL FILE A NOTICE OF INTENT TO**
24 **DISMISS THE CASE FOR FAILURE TO CONFIRM THE PLAN*******
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1 Please note that it is the Attorney's responsibility to review all proofs of claim and
2 plan objections filed with the court and resolve any discrepancies between the claims
3 and the Plan prior to submitting a SOC to the Trustee.

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5 The Trustee requires that any proposed Order Confirming Plan state:

6 "Debtor is instructed to remit all payments on or before the stated due date each month.
7 Debtor is advised that when payments are remitted late, additional interest may accrue on
8 secured debts, which may result in a funding shortfall at the end of the Plan term. Any
9 funding shortfall must be cured before the Case can be discharged. This requirement is
effective regardless of Plan payments, suspensions, waivers or moratoriums, and must be
included in any Plan Confirmation Orders".

10 "General Unsecured Claims. Such claims shall be paid pro rata the balance of payments
11 under the Plan and any unsecured debt balance remaining unpaid at the end of the Plan
12 may be discharged as provided in 11 U.S.C. § 1328(a)."

13 A. Plan Payments. The plan proposes payments of \$2,402.00 per month,
14 commencing in February 11, 2010, for a period of 60 months. The Debtors have made payments
15 in the total amount of \$9,608.00. The Debtors are current on these payments through June 11,
16 2010. The Trustee will not stipulate to confirmation unless the plan payments are current.

17 B. Plan Duration. In the event that other property is submitted to the Trustee by the
18 Debtors it shall be treated as advance plan payments. Any Order Confirming the Plan must
19 include the provisions that in no event will the duration of the Plan be reduced to less than 36
20 months, exclusive of any property recovered by the Trustee, unless all allowed claims are paid in
21 full.

1 C. Proofs of Claim. Prior to submitting a proposed SOC to the Trustee, counsel must
2 review all proofs of claim filed with the court and resolve discrepancies, if any, regardless of
3 whether an objection to confirmation has been filed. This can be done either by obtaining the
4 creditor's stipulation to confirmation or filing an objection to the proof of claim and obtaining a
5 court ruling thereon. To date the Trustee has noted that the following creditors have filed proofs
6 of claim that differ from the treatment proposed in the Chapter 13 Plan: **AZDOR and BAC**
7 **HOME LOANS.** The following creditors listed in the Plan have not filed proofs of claims:
8 **NONE.**

9 a. Objections to Confirmation. The debtors shall resolve plan objections by
10 submitting a proposed SOC to the Trustee or by setting a hearing on the objection within 30 days
11 of this objection/evaluation. If the debtor wishes to confirm by stipulation, the stipulation of the
12 objecting creditor must be obtained in writing prior to submitting a proposed SOC to the Trustee.
13 If the resolution of the objection requires changes which have an adverse impact on any other
14 creditor under the plan (including a reduction in the amount to any creditor and/or a delay in
15 payment), the changes must be noticed to creditors and an opportunity for objection provided.
16 To date the Trustee has noted that the following creditors have filed objections to the Chapter 13
17 Plan: **PIMA COUNTY ATTORNEY'S OFFICE and BAC HOME LOANS.**

18 D. 2009 Tax Returns. Trustee requests copies of tax returns for two years prior to
19 filing this case to verify the annual income listed on the Statement of Financial Affairs question 1.
20 Trustee notes that this is the second request for a copy of the Debtors 2009 tax returns. Trustee
21 requests a copy of the Debtors 2009 tax returns for review within 30 days of this evaluation.
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1 E. AZDOR Proof of Claim 2. Trustee notes that AZDOR has filed a priority proof
2 of claim in the amount of \$2,922.00 and states that this is an estimate amount due to the non-filing
3 of the Debtors 2008 and 2009 tax returns. The 2008 and 2009 tax returns will need to be filed and
4 the proof of claim amended to the correct amount. Trustee then requests that the Debtors
5 Attorney either amend the Chapter 13 Plan or address the matter in the Stipulated Order
6 Confirming Plan.

7 F. Tax Returns that have not been filed. The Court is unable to confirm this plan
8 under the provisions of 11 U.S.C. §§ 1308 and 1325(a)(9). Trustee requires that the respective
9 returns be filed for assessment of the tax liabilities so that the feasibility of the plan can be certain.

10 G. BAC Home Loans Proof of Claim 10. Trustee notes that the creditor has filed a
11 secured proof of claim in the amount of \$13,897.16 for home arrearages on the Debtors 1st
12 mortgage and the Debtors plan proposes to pay \$7,475.00 in home arrearages. Trustee requests
13 that the Debtors Attorney address this matter.

14 H. Mortgage Arrearages. Trustee notes that the proof of claim number 10 filed by
15 BAC Home Loans for mortgage arrears includes amounts that are not adequately documented
16 and/or are not reasonable. The Trustee requests that the Debtor object to the proof of claim and
17 modify the plan accordingly. Specifically the Trustee notes that the arrearage includes (escrow
18 advances, attorneys fees, etc) which are not itemized and which appear to be unreasonable.

1 I. Plan Feasibility. Pursuant to the Trustee's calculations, the Chapter 13 Plan is
2 not feasible at this time because it does not comply with 11 U.S.C. §1325(b)(1)(B). According to
3 the debtors' Form B22C, the disposable income of \$19.77, multiplied by 60 months, results in a
4 dividend to unsecured creditors of \$1,186.20. Pursuant to the Trustee's calculations, the dividend
5 to unsecured creditors is \$ -991.25 this may be due to proofs of claim that have been filed for
6 more than the plan allows. However, the Trustee reserves the right to file an amended evaluation
7 requiring adjustments to the terms of the plan, including an increase in plan funding if necessary,
8 in order to address all timely filed proofs of claims once the claims bar date has passed in this
9 case.

10 J. Submission of Proposed SOC. If the debtors propose to confirm the plan through
11 a stipulated order on confirmation, a Notice of Submitting Proposed SOC should be filed with the
12 Court, including a complete copy of the Proposed SOC as an exhibit. The Notice, SOC, and filing
13 receipt may then be transmitted to the Trustee via electronic mail (mail@dcktrustee.com) or first
14 class mail. The Trustee will not review a proposed SOC if it does not appear on the court's
15 docket.

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17 RESPECTFULLY SUBMITTED this 19th day of May, 2010.

18 OFFICE OF THE CHAPTER 13 TRUSTEE
19 7320 N. La Cholla #154-413
20 Tucson, AZ 85741

21 By /s/ DCK 011557
22 Dianne C. Kerns, Chapter 13 Trustee

23 A copy of the foregoing filed was with the
24 United States Bankruptcy Court and
25 a copy together with a receipt of filing
26 transmitted via electronic or first class
mail this 5/19/2010 to:

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By: NC